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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Ian Day,
5478 East Cholla Street
Scottsdale, AZ 85254,

Plaintiff,

v.

City of Phoenix, a municipality of
The State of Arizona,
200 West Washington Street
Phoenix, Arizona 85003
Serve: City Clerk

Defendant.

CASE NO.

COMPLAINT

1. Plaintiff, Ian Day, by and through his undersigned counsel, hereby alleges and states the following:

INTRODUCTION

2. This is an action for declaratory, monetary, and injunctive relief against Defendant City of Phoenix (hereinafter "City") for deprivation of Plaintiff's rights and

1 privileges and retaliation against him in violation of the First Amendment to the
2 United States Constitution and 42 U.S.C. § 1983.

3 **JURISDICTION AND VENUE**

4 3. This Court has jurisdiction over the subject matter of this civil action pursuant to
5 the United States Constitution, 28 U.S.C. §§ 1331, 1343, 2201 and 2202 and 42
6 U.S.C. §§ 1983 and 1988.

7 4. Venue is proper pursuant to 28 U.S.C. § 1391 because Plaintiff was employed by
8 the City, and the decision to take adverse employment actions against him,
9 including but not limited to an adverse performance appraisal, being placed on
10 administrative leave, creating and subjecting Plaintiff to a retaliatory hostile work
11 environment as a result of his protected speech and ultimately terminating his
12 employment was made in the City of Phoenix. Also, all pertinent records
13 underlying this action are located in this judicial district.

14 **PARTIES**

15 5. Plaintiff, Ian Day is a citizen of the United States and a resident of the State of
16 Arizona. At all times relevant to this suit, he has been employed by the City.

17 6. Defendant City of Phoenix (“City”) is a municipality, legal and corporate body
18 politic and local governing body of the City of Phoenix existing under the laws of
19 the State of Arizona and is a “person” within the meaning of 42 U.S.C. § 1983.
20 During the relevant time period, the City was Plaintiff’s employer for purposes of
21 his claim under 42 U.S.C. § 1983 for violations of his First Amendment rights.

22 **STATEMENT OF FACTS**

23 7. In 2015, Plaintiff, Ian Day, began working as a Senior Water Quality Inspector in
24 the City’s Environmental Services Division.

25 8. Mr. Day was a well-respected employee who succeeded in his position. However,
26 that changed once he started “blowing the whistle” and reporting on corporate
27 entities of the City violating federal, state and local laws and City officials
28 complicit in those illegalities as a result of alleged corruption or otherwise.

- 1 9. In late 2018, the Criminal Division of the U.S. Environmental Protection Agency
2 (“EPA”) investigated a property previously owned by a business named “Closed
3 Loop Recovery” (“CLR”). It requested the City’s assistance in the investigation.
- 4 10. On behalf of the City, Mr. Day was assigned to the inspection, which revealed that
5 CLR stored millions of pounds of hazardous waste (composed of crushed leaded
6 glass and mixed shredded electronics waste) outdoors and exposed to the
7 elements. Furthermore, the storage area was connected to a drain that sent all of
8 the runoff to an unknown destination.
- 9 11. Additionally, the EPA discovered that the lead dust levels at the site were so high
10 that its crews were required to wear full respiratory protective gear; the lead dust
11 had accumulated at the site over many years.
- 12 12. Mr. Day’s review of the City’s files revealed that his supervisors had previously
13 approved and signed off on CLR’s compliance with environmental laws and
14 regulations. That City approval was given repeatedly despite the fact that a City
15 inspector reported the existence of a drain and the lack of meaningful barriers to
16 prevent runoff from entering the drain.
- 17 13. Mr. Day required that the company that was managing the CLR site to identify
18 what the subject drain was connected to. After Mr. Day’s instructions were
19 ignored, the City ultimately ordered *him* to drop the issue and close the case. This
20 order was odd to Mr. Day given the blatantly illegal dumping that was taking
21 place.
- 22 14. Still, his supervisors opted to perform a “video inspection” of a storm drain
23 upstream of the CLR site and summarily concluded that the drain was not
24 connected to the City’s water supply *without any evidence* to support that
25 conclusion.
- 26 15. Mr. Day expressed concern to his superiors that the “inspection” was inadequate,
27 but he was told that if he pursued the issue any further, he would face disciplinary
28 action.

**Given His Supervisor's Lack Of Lawful Response And Orders To Overlook
The Environmental Violations He Reported, Mr. Day Engaged In Protected
Speech By Bringing His Concerns To Outside Agencies**

16. In March 2019, Mr. Day reported to his superiors and the Arizona Department of Environmental Quality ("ADEQ"), the State's environmental enforcement department, his ongoing concerns related to environmental dumping and contamination and specifically pointed to a company called "Far West Supply." Specifically, Mr. Day reported Far West Supply's storage of concentrated acidic hazardous waste that was leaking into the ground and coming into contact with containers of another hazardous waste product known to be dangerously reactive to certain acids. This created an immediate chemical explosion/decomposition hazard less than 100 feet from a residential neighborhood and across the street from a school, which was in session at the time.
17. During this March incident, Mr. Day identified the chemical explosion/incompatibility hazard and sought to contact the fire department, warn them of the site hazards, and dispatch them to assess and resolve the potential explosion hazard.
18. Another supervisor, Jennifer Calles, intervened and ordered Mr. Day to not call the fire department to Far West, based upon her false assertions about the safety and reactivity of methylene chloride. When Mr. Day questioned this order given the known volatility of this chemical compound, Ms. Calles began to repeatedly make false allegations against Mr. Day to attack his credibility and reputation.
19. Jesus Portillo, Mr. Day's immediate supervisor, ultimately issued a Notice of Violation to Far West Supply (perhaps because the State entity was involved and "watching"). Despite the Notice of Violation being issued, Mr. Day's report was not well received, and Mr. Portillo and other managers ordered him to stop "harassing" this business.

- 1 20. In carrying out these inspections and uncovering environmental violations, Mr.
2 Day was carrying out his job responsibilities faithfully.
- 3 21. In May of 2019, Mr. Day's supervisors pressured him to issue a Letter of Closure
4 to Far West and to ADEQ, stating that Far West was in full compliance with the
5 law. Knowing this to be a false representation and refusing to be party to an act of
6 fraud internally or to an outside regulator, Mr. Day took another City inspector
7 with him as a witness and drove to the Far West site, where he caught the
8 employees of Far West in the act of committing a crime, that is hauling the barrels
9 of waste from their hazardous waste storage yard to the City of Phoenix waste
10 transfer station.
- 11 22. Photographic and physical evidence confirmed that many of the barrels still held
12 liquid, and interviews with staff at the transfer station confirmed that the Far West
13 employees had made fraudulent representations to the transfer station staff for the
14 purpose of deceiving them into granting approval to take the waste.
- 15 23. Mr. Day's supervisors - instead of commending him for catching a crime in
16 progress, identifying and helping mitigate a serious hazard to fellow employees,
17 and preventing the City from improperly issuing an inaccurate report to ADEQ –
18 were furious and accusatory.
- 19 24. Mr. Day's supervisors once again accused him of harassing the company in
20 question – going as far as to baselessly assert that he had “chased” or “tailed” the
21 Far West employees to the transfer station, despite pictures and witness testimony
22 confirming that Mr. Day did not follow their vehicle but instead had determined
23 their route to and from the landfill by following the trail of chemicals they had
24 spilled on the way there. As far as Mr. Day could determine, the assertion that he
25 had chased or tailed the Far West vehicle had been made up out of thin air.
- 26 25. Shortly after making this discovery, Mr. Day reported this illicit activity outside
27 of his chain of command to the City's Office of Environmental Programs, who
28 advised him to report this (and other activity he had observed, including apparent

1 anticompétitive fraud activities by businesses avoiding paying permit fees but
2 tapping into the City's stormwater sewer system) to the City of Phoenix Integrity
3 Committee. Mr. Day promptly did so.

4 26. Mr. Day's reports to the Office of Environmental Programs and the City's
5 Integrity Committee were not part of, nor required by, his job responsibilities.

6 27. In June of 2019, shortly after making this report and attending a series of
7 interviews with the investigator assigned to the case, Mr. Day experienced
8 harassment by several of the individual supervisors named in his complaint.

9 28. Unbeknownst to him at the time, despite his complaints being ostensibly
10 anonymous, the Integrity Committee investigator assigned to the case, Donna
11 Love, had revealed his identity to the accused supervisors and was thereby
12 allowing them to discuss the case amongst themselves in an apparent attempt to
13 coordinate their testimony, as discussed in more detail below.

14
15 **Mr. Day Uncovers Improper City Actions In Overlooking Company Failures**
16 **To Follow Stormwater Permit Requirements And To Engage In**
Anti-Competitive Practices And Reports It

17 29. As a private citizen, Mr. Day was a member of the Arizona Water Association
18 ("AZ Water"). Through his work for the City, he uncovered an apparent scheme
19 where private company members of AZ Water were permitted by City officials
20 (including his supervisors in his department) to tap into the City's stormwater
21 sewer and dump their stormwater, in violation of EPA requirements under the
22 Municipal Separate Storm Sewer System ("MS4") Permits with the State and City
23 and the City's own civil code.

24 30. In late 2018, Mr. Day began to uncover and report on what he believed to be a
25 conspiracy to engage in anti-competitive practices which harmed competing
26 engineering firms who were not a part of the "scheme." Illegal stormwater
27 dumping and not paying permit fees harmed other businesses who were required
28

- 1 to maintain stormwater on their properties at their own expense. These illegal
2 actions also negatively impacted the City's revenue from stormwater permit fees.
- 3 31. These anticompetitive businesses did not pay to maintain their stormwater on site,
4 or pay to dispose of it, or pay to maintain a disposal system, and were (on several
5 occasions) caught using their discharge points to release substances identified as
6 hazardous waste and/or runoff from hazardous material storage areas. Rather,
7 they simply "dumped" their materials into the City's sewer system without a
8 permit, a violation of the MS4 Permit with the City and of the City's own
9 municipal code.
- 10 32. Mr. Day reported this alleged conspiracy and illegal dumping to City officials,
11 including but not limited to City Manager Ed Zuercher, Toni Maccarone, Shannon
12 Bell, Donna Love, Stephen Wetherell, Linda Palumbo, Jennifer Calles, Jesus
13 Portillo, Luis Weisel, Clayton Freed, Tracy Sallen, Brandy Kelso (current
14 president of AZ Water and current City of Phoenix employee), Patty Kennedy,
15 and Kathryn Sorenson (now-former City employee).
- 16 33. After raising these alleged conspiracy issues to engage in illegal dumping of
17 stormwater and other substances in City drains, Sallen, Palumbo, Freed, Kennedy,
18 Calles, Bell, Maccarone, Zuercher, Weisel, and Kelso responded by working to
19 take adverse actions against Mr. Day, including to ultimately terminate his
20 employment.
- 21 34. For example, after confronting Ms. Sorenson over email, public records requests
22 made Mr. Day aware of the fact that Ms. Sorenson (or another of the private
23 company alleged co-conspirators) retained an attorney and requested copies of the
24 records Mr. Day had obtained via public records requests. After the attorney
25 received those files, Ms. Sorenson appears to have immediately (or shortly
26 thereafter) resigned her position as Director of the City's Water Services Division.
- 27 35. Still another example, Mr. Day exercised his right as a private citizen to request
28 public records and obtained emails between one of Mr. Day's supervisors (Linda

Palumbo) and one of the City's engineering department supervisors (Keith Kesti). Those emails included a final version of a pertinent document they were discussing. In this exchange, Ms. Palumbo was asked to review engineering specifications, which explicitly outlined clear intent by the private engineering firm applicant to violate MS4 discharge restrictions. Ms. Palumbo's response indicated that she read and signed her approval on the sections of the plans which violated City Code and Federal MS4 permit requirements.

36. In mid-2019, Mr. Day forwarded these emails between Ms. Palumbo and Mr. Kesti, as well as other damning communications, to the City's Integrity Committee. Mr. Day disclosed what appeared to be happening, why he believed it was happening (illegal stormwater and non-stormwater dumping and anticompetitive behavior) and asked for the City to stop that illegal activity.

37. Continuing into 2019, Mr. Day also uncovered and documented, through photographs and maps, evidence that these illicit stormwater sewer connections were being found and intentionally ignored, despite requirements within the City's MS4 permit which obligated them to take actions to proactively identify and remove these connections. What those photographs showed was that a small percentage of these illegal connections he was describing to City officials were actually being mapped and displayed on the City's internal engineering maps by individuals working for the City who were not aware of the fact that they uncovered anything nefarious. Mr. Day's supervisors were involved in the mapping project. They appear to have repeatedly fabricated excuses for these irregularities, claiming the connections were capped – based on erroneous data – or did not exist.

38. Mr. Day did not find these excuses credible. He was on the mapping team too. He was directly involved in enough inspections which found these "nonexistent" connections, and he was directly involved in enough aspects of the City's permit compliance program to realize that things were not adding up.

- 1 39. The disconnect was simple to identify. Specifically, the City Planning and
2 Development Department claimed that the Water Department was responsible for
3 approving and managing the permits to operate these connections, while the Water
4 Department claimed that the connections largely did not exist at all, and the few
5 that did were being managed by the Planning and Development Department.
- 6 40. In truth, neither department was issuing or managing permits to operate the
7 devices and/or sewer connections at issue, but Planning and Development was still
8 granting approval to construct them, ultimately resulting in a revenue loss of
9 millions of dollars to the City in uncollected permit fees. This also led to the
10 creation of a significant compliance liability from hundreds or thousands of
11 connections, which were being operated without any of the mandatory oversight
12 or approval required by federal, state or local law.
- 13 41. To verify the reality of the issue, Mr. Day went out to some of these “nonexistent”
14 street connections himself and opened the catch-basin lids. Once those lids were
15 open, he confirmed his worst suspicions: illegal connection after illegal
16 connection existed.
- 17 42. After bringing these facts to the attention of his supervisors who took no action to
18 address the situation but rather harassed him and ordered him to stand down, Mr.
19 Day’s supervisor told him that an agent from the ADEQ, Chris Henninger, “had
20 been consulted on the decision to continue to allow the operation of connections.”
21 This apparent ADEQ complicity seemed odd to Mr. Day because the City’s own
22 rules and permit defined it as “illicit.”
- 23 43. On June 26, 2019, Mr. Day contacted Mr. Henninger to confirm this information
24 conveyed by his supervisor and to obtain a copy of whatever agreement had been
25 reached between the City and ADEQ. Mr. Day copied his supervisors on this email
26 chain.
- 27
28

1 44. Upon seeing that Mr. Day had revealed to Mr. Henninger that the program was
2 not being operated as described in the City Code, Linda Palumbo promptly sent
3 an email to Mr. Henninger to “correct” Mr. Day.

4 45. Mr. Day knew that the information that Ms. Palumbo provided to Mr. Henninger
5 in her “correction” email was substantively false, and so Mr. Day sent a follow-
6 up email to Mr. Henninger, informing him of the fact that Ms. Palumbo had, in
7 her ‘correction’ email, provided false information.

8 46. By informing Mr. Henninger of the improper actions taking place, and of Ms.
9 Palumbo’s false claims, Mr. Day stepped outside of the chain of command and
10 revealed information to Mr. Henninger which could have reasonably led to a
11 criminal investigation of Linda Palumbo’s actions.

12 47. Despite doing his lawful duty and speaking out to correct illegal actions, Mr. Day
13 was admonished for this action and, in a later “Notice of Inquiry” from the City,
14 accused of “sexism” for questioning her.

15 48. Mr. Day’s communications to individuals outside of Mr. Day’s chain of command
16 are protected disclosures under the First Amendment.

17 49. In addition, some of Mr. Day’s emails to the Integrity Committee laid out the case
18 that Linda Palumbo was deliberately and intentionally misdirecting her
19 subordinate internal investigative staff assigned to identify and eliminate this exact
20 type of illicit connections, which private AZ Water-affiliated engineering firms
21 were permitted to make. These communications to City’s Integrity Committee
22 outside of Mr. Day’s chain of command are protected disclosures under the First
23 Amendment.

24 50. Mr. Day uncovered what he also believed were further problems in his department
25 that raised red flags about potential corruption and/or mis-, mal- or non-feasance
26 by City managers.

27 51. Mr. Day discovered his supervisor Linda Palumbo ordered her entire “Illicit
28 Discharge Detection and Elimination” (“IDDE”) team into a camera-truck and

1 ordered them to spend all of their time performing “video inspections” of the entire
2 network of *main-lines* of the City sewer system as busy-work to distract them from
3 actual investigative duties. This misdirection had the apparent result of allowing
4 Palumbo to claim they her team was constantly busy “investigating” without her
5 having to worry that they would actually find anything.

6 52. The one day that Mr. Day went around popping open those catch basin lids, he
7 found more illicit connections than the entire IDDE team found in an average year!

8 53. Mr. Day also produced to City management both within and outside of his chain
9 of command a “Cost Analysis” document, which demonstrated that his
10 supervisors were aware of the fact that direct sewer connections were being tied
11 into City catch basins – not into the main lines in the street, where IDDE team
12 members were being ordered to look for them.

13 54. Mr. Day’s efforts to uncover wrongdoing as a private concerned citizen (and not
14 through his duties as a public employee) were met with further retaliation at work.

15 55. On May 6, 2019, the City, through its managers, disciplined Mr. Day for
16 “engaging AZ Water in correspondence criticizing organizational decisions.”

17 56. Disciplining Mr. Day for unsubstantiated allegations related to events that
18 occurred outside of the workplace did not make sense to Mr. Day, as he was
19 participating as a private citizen and not in his role as a public servant. The City’s
20 allegations in this instance were further emblematic of the City’s ongoing
21 retaliation against him. In an attempt to somehow tie this discipline to Mr. Day’s
22 employment, the notice of discipline issued to Mr. Day summarily asserted “there
23 is a concern for unprofessional criticism of your coworkers and peers.” That notice
24 did not offer specific details or otherwise substantiate the source(s) of any such
25 “concerns.”

26 57. Also in May 2019, Mr. Day reported to Tricia Balluff that the City was authorizing
27 the construction and operation of storm water pre-treatment devices on private
28 property connected to the City’s Municipal Separate Storm Sewer System

1 (“MS4”) without requiring companies to obtain permits required for such
2 operations. Permits are required not only by City Code but also by the EPA as
3 part of its MS4 Permit process.

4 58. Pursuant to Ms. Balluff’s recommendation, Mr. Day reported this issue to his
5 superiors, but no action was ever taken.

6 59. As a result of this non-action, in June and July of 2019, after a series of incidents
7 which caused Mr. Day to conclude that the issues he reported were being
8 mishandled, Mr. Day escalated his complaints to the City’s Integrity Committee,
9 who opened an investigation.

10 60. Information obtained via public records requests revealed that by June 21, 2019 –
11 shortly after the investigation was opened and while the investigation was still
12 ongoing – the Integrity Committee investigator on the case had revealed Mr. Day’s
13 identity as the whistleblower to Jennifer Calles and Linda Palumbo, two
14 employees whose actions had been the subject of his whistleblowing complaints.
15 This exchange revealed that the accused individuals not only knew Mr. Day’s
16 identity, but that they knew specifics of his complaint and were actively discussing
17 this information amongst themselves prior to being interviewed by the
18 investigator; coordinating their testimony and discussing how to handle scheduled
19 meetings with Mr. Day to avoid providing him with information which could
20 incriminate them.

21 61. Mr. Day’s supervisors, Mr. Portillo and Ms. Palumbo, also went to great efforts to
22 silence and discipline him for reporting concerns about environmental
23 contamination.

24 62. For example, Mr. Day was reprimanded after identifying a spilled material from a
25 sanitary sewer overflow as sewage because his report was “misleading.” However,
26 Mr. Day properly identified the material at issue as sewage and his methods were
27 consistent with the way he was specifically instructed to handle such matters in
28 another case.

63. In or around July 2019, in retaliation for Mr. Day's complaints, Mr. Portillo began inappropriately citing Mr. Day for numerous workplace "violations." For example, Mr. Day was repeatedly disciplined for violating the City's "Uniform Policy" despite the fact that the policy was not enforced against other employees.
64. Mr. Day was also cited for coming to the office late after he had suffered a workplace injury and had taken paid time off to treat that injury. Mr. Portillo also cited Mr. Day for "asking questions" about his job functions that Mr. Portillo apparently believed was insubordinate. Mr. Day reported these retaliatory acts to the City, but no action was taken.
65. In September 2019, Mr. Day's supervisor, Ms. Calles, advised that Mr. Day needed to attend mandatory weekly coaching sessions with Mr. Portillo due to "ongoing performance issues." The sessions provided further opportunities for harassment as Mr. Portillo repeatedly ridiculed Mr. Day's work performance without providing any examples of Mr. Day's alleged deficiencies.
66. Mr. Day was also advised that he was no longer permitted to communicate with City employees outside of the Water Department without Mr. Portillo's approval and that further adverse actions would be taken if he "disagreed" with his superiors.
67. Mr. Portillo repeatedly became explosively angry when Mr. Day raised any concerns to him.
68. In fact, Mr. Portillo's outburst during his first "coaching" session with Mr. Day was so alarming that another City staff member was required to be present at all such meetings going forward. Mr. Day reported to the City's Human Resources Department ("HR") that Mr. Portillo's outburst, coupled with the fact that Mr. Day planned to continue exposing improper activities rather than take part in them, made him fear for his physical safety, but no action was taken to address these concerns.

After Repeated And Escalating Improper Actions By City Officials In Response To Mr. Day's Reports Of Environmental Law Violations, He Escalates His Concerns To State Legislators To Take Action

69. On or about October 30, 2019, the fire department and Mr. Day were both called to the site of a discharge behind a business Mr. Day had previously inspected named "Cartz Partz". Upon arrival, Mr. Day observed a discharge, which appeared identical to previous discharges from the same company at the same location that had tested with a pH level to qualify the substance as "characteristic" hazardous waste. Mr. Day reported safety and environmental concerns about this hazardous waste, as the waste had been dumped directly into a residential neighborhood right before Halloween, contaminating several blocks worth of streets which would soon be hosting Trick-Or-Treating children.
70. In light of this special hazard, Mr. Day recommended the spill be handled immediately and the material treated as hazardous waste until it could be confirmed otherwise.
71. To his surprise, however, not only did Mr. Day's supervisors refuse to act on this information, but Mr. Day was outright accused by Linda Palumbo of lying about having previously found hazardous waste discharges at the site. After showing Ms. Palumbo the inspection report and sample data proving that hazardous waste had been found at the site, Mr. Day asserted that something needed to be done if for no other reason than to make sure there was no potential for any children to become exposed. In response, Ms. Palumbo called Mr. Day into her office where she not only repeated her assertion that Mr. Day was lying but went so far as to threaten Mr. Day and advise that he "needed to be very careful" with voicing his legitimate concerns.
72. Mr. Day considered this statement by Ms. Palumbo to be a threat, which he immediately reported to Human Resources ("HR"). Subsequent sworn testimony by Ms. Palumbo has revealed that this threat was never addressed or investigated by the HR investigator, despite claims by that investigator to the contrary.

1 73. The same month, Mr. Day was issued a “Notice of Inquiry” (“NOI”) related to the
2 disappearance of a cell phone he reported missing approximately six months
3 earlier. This was the first time he ever heard about City concerns about a cell phone
4 he reported missing.

5 74. Mr. Portillo also removed Mr. Day from the rotation for Acting Chief and on-call,
6 which denied Mr. Day opportunities for increased pay and overtime.

7 75. In response to this continued harassment by his supervisors for carrying out his
8 job responsibilities faithfully, Mr. Day again contacted the City’s “Integrity Line”
9 to report the City’s failure to respond to his concerns regarding hazardous waste
10 dumping, inequitable treatment, failure of City officials and certain businesses to
11 abide by City code and permit requirements, retaliation by his superiors, and an
12 overall hostile work environment. No action was ever taken.

13 76. After reaching a point where the public was being put in danger and he was himself
14 either being gaslighted, ignored or harassed for faithfully reporting illegal
15 environmental dumping and failure of City officials to take action, in or around
16 October 2019, Mr. Day contacted an Arizona state legislator to escalate his
17 concerns as a private citizen. He ultimately met with legislative staff and provided
18 testimony and other information. His disclosures are protected speech under the
19 First Amendment.

20 77. Specifically, Mr. Day reported to the State Senate a series of incidents related to
21 the City’s Water Services Division, HR Department and Integrity Committee. He
22 reported suspected fraud, anticompetitive activities, and public safety threats. He
23 reported, among other issues, that City supervisors were ordering employees
24 inspecting privately operated industrial facilities to provide fraudulent information
25 to State authorities, to not report clear crimes-in-progress (some of which directly
26 endangered public safety and the safety of other City employees) to the proper
27 authorities, to engage in unethical and arbitrary enforcement actions against
28 certain private companies, and to ignore all other private companies altogether.

1 78. Mr. Day further reported to the State Senate that the HR Department and Integrity
2 Committee became involved after the issues were reported to them internally. He
3 reported that the Integrity Committee had responded by improperly closing his
4 complaints based on information that the City knew to be objectively false (such
5 as the incorrect assertion that methylene chloride is not reactive with certain acids,
6 the false assertion that hazardous waste had not been found at Cartz Partz, etc.),
7 outing him to the supervisors accused of misconduct, and assisting those
8 supervisors accused of misconduct in their efforts to retaliate against him.

9 79. In December 2019, after it became clear that the City was not only failing to
10 address substantial misconduct but had been actively working in secret to support
11 that misconduct, Mr. Day reached out to the EPA, who responded by opening a
12 criminal investigation into the City of Phoenix. As of this time, to his knowledge,
13 the investigation is still ongoing.

14 80. In May of 2020, Mr. Day contacted the Arizona Attorney General's ("AZAG")
15 Office and reported his suspicions of criminal activity by the City, including the
16 adverse actions he had experienced up to that point. In response to Mr. Day's
17 inquiries, the Major Fraud Division of the AZAG's Office opened an investigation
18 into the City. As of this time, to his knowledge, the investigation is still ongoing.

19
20 **Soon After Reporting Alleged Corruption And Illegalities To The State
Senate, Mr. Day Is Disciplined Further**

21 81. In November 2019, Mr. Day took medical leave to undergo shoulder surgery.
22 When he returned to work in December 2019, he met with Ms. Calles and HR.
23 During this meeting, Mr. Day was informed that he was being placed on
24 administrative leave for unspecified "misconduct."

25 82. Mr. Day remained on administrative leave until his termination nearly a year and
26 a half later.

Despite Conscientious And Successful Job Performance, The City Issues Mr. Day A Negative Performance Review In Retaliation For His Protected Speech

83. On February 3, 2020, Mr. Day was issued a negative performance review for the first time during his tenure at the City. He was also denied a pay increase.

84. Mr. Day appealed that negative performance review and pay denial. He was denied his appeal rights. Rather, he was advised that his appeal was “on indefinite hold.”

85. On February 5, 2020, the City issued yet another Notice of Inquiry (“NOI”) to Mr. Day for purported “noncompliance with performance expectations.”

86. Yet, again, no specific instances of noncompliance were cited.

87. Instead, the City apparently took issue after Mr. Day complained about Ms. Palumbo’s threat to modify his leave bank if he did not immediately respond to her email, which was sent while he was on vacation.

88. Thereafter, in an effort to escape the hostile work environment to which he was subjected, Mr. Day began applying and interviewing for other positions at the City, including a Safety Analyst II position. He was denied that job.

89. Upon information and belief, Ms. Palumbo spoke poorly of Mr. Day, which influenced the hiring panel’s decision to not give Mr. Day the positions for which he interviewed.

90. According to the City’s records, the “official” reason Mr. Day was denied the Safety Analyst II position is that he failed “to provide specifics for question number one regarding his education and job experience.” However, this justification was simply pretext for retaliation.

91. Post-interview notes by members of the interview panel confirmed the fact that Mr. Day had indeed provided a detailed response to the question. When confronted about this fact, the notes showed that the reasoning for the City denying him the position shifted several times, ending up with the interviewer lacking a defensible

1 explanation and instead asserting that the reason he was not given the position was
2 due to something else entirely; vague concerns about “soft skills.”

3 92. On April 30, 2020, the City issued a third NOI to Mr. Day. This time, Mr. Day
4 was accused of being “discriminatory against his female superiors” because he
5 asked questions related to his quality assurance work. These claims were
6 meritless, and Mr. Day easily refuted them.

7 93. The basis of these claims of sexism was – first and foremost on the City’s charging
8 document – Mr. Day’s aforementioned whistleblowing to Chris Henninger of
9 ADEQ. In effect, the City once again sought to twist Mr. Day’s protected
10 disclosures on the misconduct of other employees into a justification for
11 disciplining him, while simultaneously slandering him and attacking his quality of
12 character.

13 94. Thereafter, the City escalated its retaliatory efforts against Mr. Day. Despite
14 having been absent from the office for months, his supervisors began to repeatedly
15 discipline him for benign issues in retaliation for blowing the whistle and speech
16 protected under the First Amendment.

17 95. For example, on June 2, 2020, Mr. Day was issued another NOI for an issue that
18 apparently came to the City’s attention in October 2019, *seven months earlier*.

19 96. On September 1, 2020, the City issued Mr. Day a written reprimand related to his
20 cell phone that he reported in 2019 had gone missing in 2019.

21 97. On September 4, 2020, the City issued Mr. Day a disciplinary notice, which
22 resulted in a one-day suspension. Interestingly, no explanation for this discipline
23 was included.

24 98. On December 11, 2020, Mr. Day submitted a “Notice of potential constructive
25 discharge” to the City. The notice documented much of the events set forth above.

26 99. On December 25, 2020, the City issued Mr. Day a three-page response, indicating
27 that it “needs additional time to complete relevant investigations.”
28

100. By that point in time, the City had already been “investigating” Mr. Day for over a year. The City failed to address the issues Mr. Day set forth in his “Notice of potential constructive discharge.”

The City Further Restricts Mr. Day’s Free Speech Rights By Preventing Him From Seeking Public Records Through Proper FOIA Requests

101. While on administrative leave, Mr. Day submitted several public records requests to the City. For example, he requested communications between certain City employees pertaining to the so-called “investigations” on him and pertaining to the concerns he raised about the City’s alleged involvement in environmental waste dumping and violation of the EPA’s MS4 Permit.

102. On January 26, 2021, the City sent Mr. Day a “Cease and Desist Notice,” which stated: “You are advised that you are to immediately cease and desist from continued communications via in person, via phone or via email with any City employee except for the designated contact person below. This includes any City mailbox, such as those designated for submissions to the Integrity Line, Human Resources, or public records requests.”

103. By this “Cease and Desist” Notice, the City was blatantly attempting to not only muzzle Mr. Day, it was also preventing him from continuing to report its illegal and unethical conduct to the City’s HR Department and Integrity Committee, appropriate outside government personnel and oversight agencies.

104. Furthermore, by this “Cease and Desist” Notice, the City attempted to unilaterally absolve itself from its requirements to respond to Mr. Day’s lawful public record requests. The City cited no lawful basis for doing this.

The City Moves Forward With Terminating Mr. Day’s Employment

105. On March 19, 2021, the City sent Mr. Day a “Pre-Termination Memo (“Memo”). The Memo explicitly noted that the City believed Mr. Day engaged in “work-related misconduct” arising from his alleged disclosure of information related to

1 “Stormwater Management Plan compliance” to another government body, namely
2 the State legislature. When shown the records the City alleged Mr. Day improperly
3 disclosed to State legislators, Mr. Day immediately identified discrepancies
4 between the documents he was shown and the ones he actually turned over to the
5 State, including what appeared to be unrelated email exchanges and hand-written
6 notes in someone else’s handwriting which appeared to have been added to the
7 documents. This caused Mr. Day to conclude that the documents he was shown
8 had clearly been tampered with, a fact he promptly revealed to the City.

9 106. Nevertheless, Mr. Day denied disclosing privileged and/or confidential records to
10 third parties. He did, however, admit that he escalated his concerns about
11 illegalities and City manager mal- and non-feasance to State legislators for
12 investigation.

13 107. This justification for Mr. Day’s termination – that he reported illegalities and
14 alleged City corruption to State legislators (which is protected First Amendment
15 speech) – is not only a pretext for retaliation but also evidence that his speech was
16 the basis for his termination.

17 108. Having tried and failed to find a defensible justification to fire Mr. Day, the City
18 searched long and hard for alternative excuses to provide a justification for Mr.
19 Day’s firing. The numerous entities Mr. Day blew the whistle to were clearly
20 connected to law enforcement, and thus the disclosures were clearly protected.
21 This protection also applied to the disclosures Mr. Day made to the State
22 legislature as well.

23 109. Having found nothing else to justify the extraordinary retaliation Mr. Day
24 experienced at their hands, and out of sheer desperation and fear of the
25 consequences of admitting they had been caught aiding and abetting potentially
26 felony-level misconduct and retaliating against a whistleblower by harassing him
27 for over a year at that point, the City supervisor conspirators simply fabricated an
28 explanation by substantively misrepresenting Mr. Day’s actions and falsely

1 accusing him of releasing “privileged” information to the general public rather
2 than to a government entity.

3 110. To further this objective, they attempted (1) to cover up the fact that City officials
4 considered what Mr. Day did to have been a protected whistleblowing activity, as
5 evidenced by a communication between City Manager Ed Zuercher and the
6 Integrity Committee, along with the subsequent attempt (2) to claim this
7 communication never occurred.

8 111. Pursuant to the procedures set forth in the Memo, Mr. Day submitted an eighty-
9 five- page response on March 24, 2021.

10 112. On April 2, 2021, the City sent Mr. Day a “Discipline Notice,” which terminated
11 his employment.

12 113. During his termination process, the attorney representing the City, Shannon Bell,
13 admitted at the recorded hearing that a central underlying reason that Mr. Day was
14 terminated was for what she called “conspiracy theories.” This was a comment
15 she made in direct response to Mr. Day’s continued assertion of evidence
16 supporting the conclusion that AZ Water-affiliated companies were exploiting
17 corrupt officials within the City to engineer an illicit anticompetitive advantage
18 over businesses which were not part of the conspiracy by allowing them to “dump”
19 their stormwater into City sewers and also not pay permit fees. He also presented
20 evidence that AZ Water members working for the City were demonstrably acting
21 on behalf of this private organization to utilize the City’s resources to retaliate
22 against individuals who attempted to expose this scheme, including Mr. Day.

23 **COUNT ONE**
24 **(Free Speech Violation)**

25 114. The foregoing paragraphs are realleged and incorporated by reference herein.

26 115. Plaintiff’s job responsibilities, among others, required him to inspect stormwater
27 connections and potential environmental contamination and dumping by private
28 entities within City limits.

1 116. Not only did Mr. Day report environmental law violations and suspected unlawful
2 anti-competitive practices to his supervisors up through his chain of command, he
3 also objected to orders by his superiors to stop reporting such illegal activity, and
4 he refused orders to participate in that and other illegal activity.

5 117. He then escalated his concerns with illegal activities and the corrupt and
6 concealment activities of City managers in an apparent conspiracy with AZ Water-
7 affiliated companies to engage in wrongdoing. He made reports and other
8 disclosures to the City's HR Department and Integrity Committee, a place where
9 he was directed to report waste, fraud and abuse and receive whistleblower
10 protection.

11 118. His reports to those City entities outside of his chain of command are not within
12 Mr. Day's job responsibilities. His reports to those entities are protected speech
13 on matters of public concern, protected by the First Amendment.

14 119. Furthermore, Mr. Day's reports to regulators and state legislators of illegal private
15 sector wrongdoing, environmental dumping, and alleged conspiracies and/or
16 complicity of City managers are protected speech on matters of public concern
17 under the First Amendment. *Freitag v. Ayers*, 468 F.3d 528, 545 (9th Cir. 2006).

18 120. Mr. Day's communications with individuals and entities outside of his chain of
19 command were not part of his official job duties. *Freitag*, 468 F.3d at 545-546.

20 121. Unlike his direct submissions to his Water Services Department superiors where
21 he highlighted illegal environmental dumping, Mr. Day's written submissions to
22 the City's HR Department, Integrity Committee, Public Records Department,
23 ADEQ, AZAG, EPA and the State Senate were not within Mr. Day's job duties.
24 He was making those submissions as a private citizen voicing matters of public
25 concern about government fraud, waste and abuse of power.

26 122. Mr. Day raised concerns about department corruption and systemic abuses, which
27 were also not part of his job duties.

28 123. Mr. Day also defied his supervisors' improper orders and spoke on matters of

1 public concern in contravention of those orders, which falls outside of his
2 professional duties. *Dahlia v. Rodriguez*, 735 F.3d 1060, 1075 (9th Cir. 2013).

3 124. As a result of Mr. Day's protected disclosures and protected speech under the First
4 Amendment to the U.S. Constitution, the City retaliated against him by, among
5 other ways, taking adverse actions against him, including but not limited to
6 (1) creating a retaliatory hostile work environment for him, (2) giving him a
7 negative performance evaluation, (3) issuing bogus and unfounded Notices of
8 Inquiry, written reprimands and other disciplinary actions, (4) denying
9 promotional opportunities and experience that would allow him to be promotable,
10 (5) denying pay raises and bonus opportunities, and (6) terminating his
11 employment.

12 125. The stated reasons for the Defendant's adverse actions against Mr. Day are not the
13 true reasons (or were shifting reasons), but instead are a pretext to hide
14 Defendant's retaliatory animus.

15 126. The City made only the most cursory of efforts to conceal this fact. The Notices
16 of Inquiry that Mr. Day received make it clear that the accusations of (for example)
17 sexism against Mr. Day are, in fact, being motivated clearly and directly by his
18 whistleblowing activity. These accusations are direct acts of retaliation against
19 him for revealing improper behavior by his superiors, as evidenced by the City's
20 own words and actions.

21 127. As a direct and proximate result of Defendant's actions, plaintiff Ian Day has
22 suffered, and continues to suffer, loss of income and other employment benefits,
23 personal humiliation, mental anguish, indignity, embarrassment, inconvenience,
24 pain and suffering, loss of enjoyment of life, and damages to his professional
25 reputation justifying an award including, but not limited to, lost wages, step
26 increases, lost promotion opportunities, leave benefits, and compensatory
27 damages against the Defendant.

28 128. Attorney's fees should be awarded as a "prevailing party" under 42 U.S.C. § 1988.

PRAYER FOR RELIEF

129. WHEREFORE, the Plaintiff requests that the Court award him the following relief:

- (a) Enter a declaratory judgment that Defendant unlawfully retaliated against Plaintiff Ian Day in violation of the First Amendment to the U.S. Constitution as applied to local governments under 42 U.S.C. § 1983;
- (b) Award reinstatement at the position and duties he held prior to his termination, with all attendant back pay, step increases, benefits and other emoluments of employment, upon proof at trial of justification for such an award;
- (c) Award of compensatory damages in excess of \$100,000.000 to compensate him for the pain, suffering and indignities he has suffered as a result of the retaliation;
- (d) Award costs and reasonable attorneys' fees incurred to vindicate his civil rights in, and as a result of, this lawsuit;
- (e) Award to Plaintiff and against Defendant pre-judgment and post-judgment interest thereon;
- (f) Award such other damages and further relief as deemed just and proper.

JURY DEMAND

The Plaintiff requests a trial by jury on all issues of fact and damages arising herein.

///

1 Dated: February 2, 2022

Respectfully submitted,

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